No. 17-5554

In The Supreme Court of the United States

DENARD STOKELING,
Petitioner,

v.

UNITED STATES,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

BRIEF OF THE NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

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QUESTION PRESENTED

Is a state robbery offense that includes "as an element" the common law requirement of overcoming "victim resistance" categorically a "violent felony" under the only remaining definition of that term in the Armed Career Criminal Act, 18 U.S.C. § 924(e)(2)(B)(i) (an offense that "has as an element the use, attempted use, or threatened use of physical force against the person of another"), if the offense has been specifically interpreted by state appellate courts to require only slight force to overcome resistance?

TABLE OF CONTENTS

QUESTION PRESENTED i

TABLE OF AUTHORITIES iii

INTEREST OF *AMICUS CURIAE* 1

INTRODUCTION AND SUMMARY OF THE ARGUMENT 2

ARGUMENT 4

THE ARMED CAREER CRIMINAL ACT APPLIES ONLY TO VIOLENT ROBBERIES. 4

A. Because The Use Of Violent Force Is Not An Element Of Robbery Under Florida Law, Florida Robbery Is Not A "Violent Felony" Under ACCA. 4

B. The Act's Legislative History, Like Its Text, Reflects Congress's Intent To Target Only Violent Robbery In ACCA. 8

C. The Government's Proposed Focus On Whether The Facts Of Particular Cases Present Some Potential Risk Of Slight Injury Would Impermissibly Expand The Reach Of The Elements Clause Beyond Its Text. 14

CONCLUSION 19

TABLE OF AUTHORITIES

Cases

Begay v. United States, 553 U.S. 137 (2008) 7, 8, 13

Curtis Johnson v. United States, 559 U.S. 133 (2010) (*"Curtis Johnson"*) ..... *passim*

Flores v. Ashcroft, 350 F.3d 666 (7th Cir. 2003)... 5, 15

Leocal v. Ashcroft, 543 U.S. 1 (2007) 6, 7

Moncrieffe v. Holder, 569 U.S. 184 (2013) 17

Montsdoca v. State, 93 So. 157 (Fla. 1922) 6, 16

Nixon v. United States, 506 U.S. 224 (1993) 8

Robinson v. State, 692 So. 2d 883 (Fla. 1997) 6, 7

Rockmore v. State, 140 So. 3d 979 (Fla. 2014)..... 10

Rumph v. State, 544 So. 2d 1150 (Fla. Dist. Ct. App. 1989) 7

Samuel Johnson v. United States, 135 S. Ct. 2551 (2015) (*"Samuel Johnson"*) 11, 17

Taylor v. United States, 495 U.S. 574 (1990) 12, 16

United States v. Castleman, 134 S. Ct. 1405 (2014)..... 5, 6, 15

United States v. Welch, 683 F.3d 1304 (11th Cir. 2012)..... 18

Voisine v. United States, 136 S. Ct. 2272 (2016) 7

Statutes

18 U.S.C. § 16 7

18 U.S.C. § 921(a)(33)(A) 7

18 U.S.C. § 924(a)(2) 4

18 U.S.C. § 924(e) 4

18 U.S.C. § 924(e)(2)(B)(i) 4, 6, 11

18 U.S.C. § 924(e)(2)(B)(ii) 11, 17

8 U.S.C. § 1101(a)(43) 18

Armed Career Criminal Act of 1984, Pub. L. No. 98-473, ch. 18, § 1803, 98 Stat. 2185 9

Career Criminals Amendment Act of 1986, Pub. L. No. 99-570, 100 Stat. 3207 10

Other Authorities

132 Cong. Rec. 7697 (1986) 13

Armed Career Criminal Act Amendments: Hearing on S. 2312 before the Subcommittee on Criminal Law of the Senate Committee on the Judiciary, 99th Cong., 2d Sess. (1986) 10, 12, 13

Armed Career Criminal Legislation: Hearing on H. R. 4639 and H. R. 4768 before the Subcomm. on Crime of the House Comm. on the Judiciary, 99th Cong., 2d Sess. (1986) 13

H.R. Rep. No. 98-1073 (1984) 9

H.R. Rep. No. 99-849 (1986) 12

S. Rep. No. 98-190 (1983) 9

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INTEREST OF *AMICUS CURIAE*[1]

The National Association of Criminal Defense Lawyers (NACDL) is a nonprofit voluntary professional bar association that works on behalf of criminal defense attorneys and strives to ensure justice and due process for those accused of crime or misconduct. NACDL was founded in 1958. It has a nationwide membership of many thousands of direct

[1] All parties have consented to the filing of this brief. *See* Supreme Court Rule 37.3(a). No counsel for either party authored this brief in whole or in part, and no person or entity other than *Amicus* or its counsel made a monetary contribution to the brief's preparation or submission.

members; up to 40,000 counting affiliates. NACDL's members include private criminal defense lawyers, public defenders, military defense counsel, law professors, and judges. NACDL is the only nationwide professional bar association for public defenders and private criminal defense lawyers.

NACDL is dedicated to advancing the proper, efficient, and just administration of justice. In keeping with this commitment, NACDL files numerous *amicus* briefs with this Court and has done so in other cases involving the proper interpretation and application of the Armed Career Criminal Act, including, for example, *Curtis Johnson v. United States*, 559 U.S. 133 (2010); *Samuel Johnson v. United States*, 135 S. Ct. 2551 (2015); and most recently *Mathis v. United States*, 136 S. Ct. 2243 (2016). By offering its perspective, NACDL seeks to assist in cases that present issues of broad importance to criminal defendants, criminal defense lawyers, and the criminal justice system as a whole.

INTRODUCTION AND SUMMARY OF THE ARGUMENT

A shoplifter in Tampa slips a lipstick in her pocket. As she makes her way to the door, a loss prevention officer yells "stop" and grabs her arm. She yanks her arm free and bolts out of the door. He catches up to her, and she is convicted of robbery because, in the lexicon of Florida courts, she used "force" at some point during the encounter—*i.e.*, yanking her arm out of the loss prevention officer's hand to overcome his "resistance" to her getaway.

This is no idle hypothetical; Florida decisions document robbery convictions on similar facts.

In yanking her arm away, the shoplifter exerted force in a Newtonian sense. But she did not use substantial, violent force as the text of the Armed Career Criminal Act (ACCA, or the Act) requires. And her crime was not the sort of violent robbery that Congress intended to single out when it adopted the Act to impose harsh mandatory minimum sentences on the Nation's most hardened repeat criminals. Although Congress anticipated that convictions for violent forms of robbery would qualify, Congress did not intend for ACCA's highly enhanced federal sentences to be based on garden-variety thefts.

It thus does not matter that one could imagine, as the government suggests, how a shoplifter using some slight force to overcome resistance—nudging a loss prevention officer out of the way while escaping, for example—might, under some set of circumstances, cause the loss prevention officer to suffer some slight injury. Causing a slight injury, like a bruise, does not necessarily involve violent force, which is what ACCA requires. What's more, Florida law does not require that the force involved in a robbery be capable of causing even that much harm; no element of Florida robbery mandates that the "force" exerted by the robber be capable of causing any injury whatsoever. Interpreting the Act to reach any crime that involves nominal "force," based on only the hypothetical risk of injury in sample cases, impermissibly expands the scope of the Act beyond its text.

As the Act now stands, its terms are clear. It applies only to state crimes that require strong,

substantial force, in every case. Florida robbery—encompassing a mere nudge from an escaping perpetrator—does not.

ARGUMENT

THE ARMED CAREER CRIMINAL ACT APPLIES ONLY TO VIOLENT ROBBERIES.

A. Because The Use Of Violent Force Is Not An Element Of Robbery Under Florida Law, Florida Robbery Is Not A "Violent Felony" Under ACCA.

The Armed Career Criminal Act imposes a highly elevated mandatory minimum sentence for unlawful firearm possession by a defendant who has been convicted of three violent felonies (or serious drug offenses, which were in Congress's judgment intrinsically intertwined with violent crime) at any time in his past. 18 U.S.C. § 924(e). Rather than the ordinary ten-year maximum sentence for unlawful firearm possession, a defendant with three prior "violent felony" convictions faces a sentence between fifteen years (the mandatory minimum) and life in prison. *Id.* § 924(a)(2), (e). Apart from four enumerated crimes (burglary, arson, extortion, or use of explosives), a conviction involves a "violent felony" only if the crime has "as an element the use, attempted use, or threatened use of physical force against the person of another." *Id.* § 924(e)(2)(B)(i).

1. As this Court has explained, "force" in this context—a "statutory definition of 'violent felony'"—means "*violent* force." *Curtis Johnson v. United*

States, 559 U.S. 133, 140 (2010). This is the "ordinary meaning" of "physical force," which "normally connotes force strong enough to constitute 'power,'" and the connotation is even greater when the phrase "is contained in a definition of 'violent felony.'" *Id.* at 138, 142.

Under this ordinary, "clear" meaning of the statutory text, a crime must have an element requiring the use (or threat) of "strong," "substantial" "force capable of causing physical pain or injury to another person" to qualify as a violent felony. *Id.* at 140. A slap in the face causing pain may be sufficiently violent, *id.* at 143, but a squeeze of an arm causing a bruise likely is not, *United States v. Castleman*, 134 S. Ct. 1405, 1412 (2014) (citing *Flores v. Ashcroft*, 350 F.3d 666, 670 (7th Cir. 2003)).

Florida robbery does not require the type of "strong physical force" necessary for the crime to qualify as a "violent felony" under the plain meaning of the statutory text, *Curtis Johnson*, 559 U.S. at 140, for several reasons. *See* Pet'r Br. 26-41. For one thing, a tug or pull applied only to an object meets the "force" element for robbery under Florida law—even if the robber does not touch the victim at all. *See* Pet'r Br. 34-35 (describing case). That is not "strong," "substantial," "violent force" used "against the person of another" under any reasonable understanding of those terms.

What's more, even where the "force" in question does involve touching another person, the amount of "force" required for Florida robbery is calibrated to the level of resistance, so even minimal "force" is enough if the resistance is also minimal. *See* Pet'r Br. 31-32.

For decades, the Florida Supreme Court has emphasized that the "degree of force used is immaterial" to whether a theft qualifies as a robbery, because all "that is required to make the offense a robbery is such force as is actually sufficient to overcome the victim's resistance." *Montsdoca v. State*, 93 So. 157, 159 (Fla. 1922); *see Robinson v. State*, 692 So. 2d 883, 886 (Fla. 1997) (stating the same rule); *see also* Pet'r Br. 28-31. Examples bear out the Florida Supreme Court's admonition that any "force" will do. *See* Pet'r Br. 33-36, 38-40 (describing examples involving opening a fist to grab cash, "rak[ing]" a victim's hand, and escaping the grasp of a bystander). These examples may involve force of a kind—like squeezing an arm hard enough to cause a bruise—but they fall far short of the "substantial degree of force" required by the ordinary meaning of the statutory text. *Curtis Johnson*, 559 U.S. at 140.

2. That Florida robbery can be committed by minimal force falling far short of the violent force specified by ACCA is reason enough to reverse the judgment below. The Court need examine no other aspect of the elements clause beyond the requirement of "physical force." *See* Pet'r Br. 18-26. But the rest of the clause buttresses this result. In *Amicus's* view, Florida robbery also fails to qualify as a "violent felony" because it does not require the purposeful "use" of violent force. 18 U.S.C. § 924(e)(2)(B)(i). "Use" of force cannot, of course, be "negligent or merely accidental." *Castleman*, 134 S. Ct. at 1414 n.8 (citing *Leocal v. Ashcroft*, 543 U.S. 1, 9 (2007)). And the term "violent felony" itself connotes a *purposeful* use of force. *See Curtis Johnson*, 559 U.S. at 140 ("The ordinary meaning of ['crime of violence'] ... suggests a

category of violent, active crimes.") (quoting *Leocal*, 543 U.S. at 11); *cf. Begay v. United States*, 553 U.S. 137, 145 (2008) ("Crimes committed in such a purposeful, violent, and aggressive manner are ... characteristic of the armed career criminal, the eponym of the statute.") (citation and internal quotation marks omitted).[2]

Under Florida law, not only is the degree of "force" immaterial, but the act deemed to be "force" need not be purposeful or aggressive to support a robbery conviction. For example, a shoplifting is converted to a "robbery" under Florida law if the perpetrator nudges a security officer on the way out of the store, or simply pulls away when a bystander grabs his arm. *See Robinson*, 692 So. 2d at 886-87 & n.10 (noting that a 1903 case involving a pickpocket's attempt to escape from the grasp of a victim would qualify as robbery under current Florida law); *Rumph v. State*, 544 So. 2d 1150, 1151 (Fla. Dist. Ct. App. 1989) (shoplifter "pushing [an employee] out of the way as he bolted through the front door" constituted robbery). Although the Court need not resolve what

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[2] The Court has not resolved whether a crime requiring only the reckless use of force would qualify as a "violent felony" under ACCA. *Cf. Voisine v. United States*, 136 S. Ct. 2272, 2280 n.4 (2016) (reserving the question regarding "crime of violence" in 18 U.S.C. § 16). The Court's holding that recklessness satisfies the test for a misdemeanor crime of domestic violence under 18 U.S.C. § 921(a)(33)(A), where (unlike ACCA) Congress intended to sweep in "garden-variety assault or battery misdemeanors," does not automatically carry over to the Act's definition of "violent felony," "in light of differences in [the statutes'] contexts and purposes," *id.* at 2280 & n.4 (discussing distinctions between § 921(a)(33)(A) and § 16).

mens rea qualifies as "use" of force to decide this case, Florida's acceptance of purported "force" that is both slight and wholly incidental and reactive underscores the vast distance between Florida robbery and the category of "violent, active crimes," *Curtis Johnson*, 559 U.S. at 140, encompassed by ACCA.

B. The Act's Legislative History, Like Its Text, Reflects Congress's Intent To Target Only Violent Robbery In ACCA.

Statutory text alone establishes that Congress did not intend to sweep the Nation's unlucky shoplifters and clumsy pickpockets into the "armed career criminal" category. *See Nixon v. United States*, 506 U.S. 224, 232 (1993) ("[T]he plain language of the enacted text is the best indicator of intent."). The Court need go no further, but examining legislative history only confirms the natural reading of the Act's text: Congress did not intend to sweep in any and every variety of robbery when it passed the Act, but rather was concerned with those robbery offenses that involve violence. "As suggested by its title, the Armed Career Criminal Act focuses upon the special danger created when a particular type of offender—a violent criminal or drug trafficker—possesses a gun." *Begay*, 553 U.S. at 146. Congress's special concern for violent career criminals did not extend to robbery crimes, like Florida's, that often involve no violence at all.

1. In the statute's first incarnation, in 1984, ACCA applied only to prior convictions for robbery and burglary, and these enumerated crimes were explicitly defined in the statute. Congress was particularly concerned with those two crimes because they were

common and oft-repeated by a small subset of "career criminals." *See* H.R. Rep. No. 98-1073, at 3 (1984) (quoting Senator Spector's statement introducing companion bill as "succinctly describ[ing] the rationale" for the Act, including that "[r]obberies and burglaries occur with far greater frequency than other violent felonies" and a "high percentage of [them] are committed by a limited number of repeat offenders"). And robbery, as described in the legislative history, was marked by physical violence: As recited by Senator Spector, and endorsed by the House Committee Report, robberies "involve physical violence or the threat thereof" and often "result in physical injuries." *Id.* The evidence and statistics considered by Congress therefore focused on violent and armed robberies, with the Senate report on an earlier version of the 1984 law citing evidence that "nearly 75 percent of the robbery victims miss ... days of work" due to the robbery, "a large number of robbers use firearms," and the "typical offender" in one study "would have committed five armed robberies and seven burglaries" in the prior year. S. Rep. No. 98-190, at 4, 6 (1983).

The 1984 act's text confirmed its limitation to more serious robberies, consistent with Congress's intent "to combat violent and major crime." S. Rep. No. 98-190, at 1. As defined, "robbery" was a narrower crime than the version that exists under Florida law. *See* Armed Career Criminal Act of 1984, Pub. L. No. 98-473, ch. 18, § 1803, 98 Stat. 2185, 2185. "Robbery" was defined as "the taking of the property of another from the person or presence of another by force or violence, or by threatening or placing another person in fear that any person will imminently be subjected

to bodily injury." *Id.* Specifically, ACCA's predecessor statute required that violent force be used to effectuate the theft. *See id.* (requiring the "taking" to be done "by force or violence"). But Florida law has no such requirement, due to a statutory amendment departing from the common-law rule. *See* Pet'r Br. 27; *Rockmore v. State*, 140 So. 3d 979, 982 (Fla. 2014). In contrast to Congress's focus on violent robbery—*i.e.*, robbery where violence is intentionally used to forcibly take property—Florida law encompasses crimes where the theft is free of any force, and sweeps any getaway pulling or nudging into the crime of "robbery."

Congress's focus on more serious robberies involving purposeful force in the taking of property was consistent with Congress's intent for local prosecutors to refer only "their most hardened robbers and burglars for Federal prosecution," and not to sweep in low-level crimes. *Armed Career Criminal Act Amendments: Hearing on S. 2312 before the Subcommittee on Criminal Law of the Senate Committee on the Judiciary*, 99th Cong., 2d Sess., at 8 (1986) (hereafter "Senate Hearing") (testimony of James Knapp describing 1984 act).

2. The textual amendments made by Congress in 1986, as well as the legislative history surrounding those amendments, further confirm Congress's focus on violent robbery, even as Congress expanded the Act's reach to additional kinds of violent crimes (as well as serious drug offenses). *See* Career Criminals Amendment Act of 1986, Pub. L. No. 99-570, 100 Stat. 3207, 3207-39.

The most important change made by Congress in 1986 was to replace the enumeration of burglary and

robbery with two definitions of "violent felony." The first, discussed above and commonly called the "elements clause," expanded the violent crimes covered by the Act to include any crime having an element requiring the use or threat of violent force against another person. 18 U.S.C. § 924(e)(2)(B)(i). The second definition enumerated four property crimes that qualified as violent felonies—burglary, arson, extortion, and the use of explosives—and added as a catch-all category any crime that "otherwise involves conduct that presents a serious potential risk of physical injury to another," *id.* § 924(e)(2)(B)(ii). This last clause, commonly called the "residual clause," has since been invalidated as unconstitutionally vague. *Samuel Johnson v. United States*, 135 S. Ct. 2551 (2015).

Significantly, and in contrast to burglary, Congress did not re-enumerate robbery as a predicate crime. So after the 1986 amendments, a robbery conviction did not qualify as a violent felony simply by mapping on to "generic," commonly understood robbery, as is the approach for burglary and the other enumerated crimes. *See Mathis v. United States*, 136 S. Ct. 2243, 2247-48 (2016). Of course, Congress still anticipated, and intended, that violent robbery would be covered by the Act—*i.e.*, those robbery offenses that, by their terms, satisfied the violent-force standard of the elements clause (or, before the residual clause was invalidated, those that "otherwise involve[d] conduct that presented a serious potential risk of physical injury to another"). But the deletion of robbery from the list of enumerated crimes cabined the range of robberies potentially qualifying as ACCA predicates, even as ACCA's reach was expanded to

other violent crimes—the primary purpose of the 1986 amendments, *Taylor v. United States*, 495 U.S. 574, 584 (1990). Had Congress believed that *all* robbery would necessarily satisfy the elements clause or residual clause, there would have been no reason for Congress to remove robbery from the list of crimes enumerated in the statute.[3]

Discussion of the 1986 amendments again showed how the kind of robbery Congress intended to target in the Act was dangerous, violent robbery involving substantial force. Committee reports on the bill that was ultimately enacted repeatedly referred to "robbery" in the same breath as highly violent crimes such as rape and murder. *See, e.g.*, H.R. Rep. No. 99-849, 99th Cong., 2d Sess., at 3 (1986) (describing the elements clause as "includ[ing] such felonies involving physical force against a person such as murder, rape, assault, robbery, etc."); *id.* at 4 (same). As in 1984, moreover, and consistent with the title of the Act, much of the information considered by Congress focused on "career criminals" that had committed *armed* robberies. *See, e.g.*, Senate Hearing, at 29 (ATF letter to Senator Specter, June 5, 1986) (describing same study cited in 1984 indicating that 100 typical offenders will have committed 490 armed robberies, 720 burglaries, and approximately 4,000 other serious crimes); *id.* at 19 (statement of Deputy Asst. Sec'y for

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[3] The invalidation of the residual clause, moreover, has further narrowed the range of robbery offenses that qualify as "violent crimes" under ACCA: while the residual clause might have applied so long as a robbery offense would *typically* involve violence, the elements clause applies only if the offense *always* involves violent force.

Enforcement, Bureau of Alcohol, Tobacco & Firearms, describing 1984 act as addressing the problem of "habitual armed robbers").

Finally, Congress's focus on violent robberies was consistent with the overall drive of the legislation: to target the most dangerous, most violent career criminals. The legislative history is replete with a focus on violence, not some incidental act that can be described as force only in the most basic, minimal physical sense. As described by the sponsor of a precursor bill to the enacted legislation, the expansion was designed "to be used against the most dangerous criminals." 132 Cong. Rec. 7697 (1986) (statement of Sen. Arlen Spector). Witnesses, too, described the conduct encompassed by the new definitions as "violent in nature and dangerous." Senate Hearing, at 17 (testimony of Joseph DiGenova, U.S. Attorney for Washington, D.C.). At the same time, the sponsors of the legislation sought to ensure that Congress did not "open up a situation where just garden variety local crimes and property matters end up in the Federal courts." *Armed Career Criminal Legislation: Hearing on H. R. 4639 and H. R. 4768 before the Subcomm. on Crime of the House Comm. on the Judiciary*, 99th Cong., 2d Sess., at 12 (1986) (testimony of precursor bill sponsor Rep. Ron Wyden). Shoplifting and pickpocketing—even if accompanied by a slight tussle during the getaway—are garden variety local crimes, not dangerous, violent felonies. They are not the sort of crimes "typically committed by those whom one normally labels 'armed career criminals.'" *Begay*, 553 U.S. at 146.

C. The Government's Proposed Focus On Whether The Facts Of Particular Cases Present Some Potential Risk Of Slight Injury Would Impermissibly Expand The Reach Of The Elements Clause Beyond Its Text.

To avoid the plain import of the "clear," "ordinary meaning" of "physical force"—that an element of robbery require a "substantial degree of force," *Curtis Johnson*, 559 U.S. at 140—the government's Brief in Opposition (BIO 11-13) attempts to shift the inquiry under the elements clause from the degree of force Florida law requires in every case (minimal) to the injury that might conceivably result from the conduct involved in a handful of cases. Relying on one sentence—and, arguably, one word—from *Curtis Johnson* (and nothing from the text of the statute), *see* Pet'r Br. 22-25, the government argues that Florida robberies are often accompanied by a risk of injury, so Florida law *must* require that the force used in *any* robbery be force that is "capable of causing physical pain or injury to another person," *Curtis Johnson*, 559 U.S. at 140.

There are at least two problems with that approach. First, the government assumes that identifying any risk of injury (however remote the risk and however slight the potential injury) is enough to show that violent force is involved. But violent force requires more, as the Court recognized in *Castleman*. Second, the government's approach wrongly equates a hypothetical risk of injury drawn from the facts of a few cases with a state-law element requiring that the robber use substantial force capable of injury in *every*

case. That approach is counter to ACCA's text. And it would also effectively (and impermissibly) expands the reach of the elements clause to include crimes that might have qualified under the now-invalidated residual clause, but do not meet the elements test, which focuses on the least-culpable conduct encompassed by an offense.

1. Even if assessing the level of risk presented by the typical case were an otherwise acceptable approach to the elements clause (it is not, as described below), the cases demonstrate that the level of risk presented by Florida robbery often falls far below what might correspond to a violent-force element, as Petitioner explains. A person can commit Florida robbery by pulling bills from another person's hand, without touching the other person at all. *See* Pet'r Br. 34 (describing case). The victim in such a case could suffer a paper cut, perhaps—but a paper cut is not the type of actual or potential injury that might indicate violent force. *See Flores v. Ashcroft*, 350 F.3d 666, 670 (7th Cir. 2003) (describing battery examples, including causing a "paper cut," and noting "[i]t is hard to describe any of this as 'violence'") (cited with approval in *Curtis Johnson*, 559 U.S. at 140). Given that force capable of causing slight or nominal injury (like a bruise) is not violent, *Castleman*, 134 S. Ct. at 1412, the government cannot be right (*see* BIO 12) that the mere *risk* of such slight injury satisfies ACCA's violent-force requirement.

2. The elements clause cannot be satisfied simply by hypothesizing a typical risk of harm from the facts of a few robbery convictions in any event. Florida law does not *require* that the "force" used in a robbery be

capable of causing injury in every case—much less that the force be reasonably expected to cause pain or injury, as would be required for it to be substantial, violent force, *see* Pet'r Br. 23-24. In fact, in many of the Florida cases cited by Petitioner, there was no injury at all. *See* Pet'r Br. 33-36. That is because whether the "force" was strong enough to cause any sort of pain or injury is not a factor or test applied by the Florida courts to determine if the elements of robbery are satisfied. *See* Pet'r Br. 28-31. Rather, Florida courts have consistently recognized that the degree of force is "immaterial" to the offense. *E.g.*, *Montsdoca*, 93 So. at 159.

ACCA's statutory structure illustrates how the government's approach wrongly diverges from the elements clause's focus on the state crime's legal requirements. Before Congress adopted the 1986 amendments to ACCA, it considered two different bills, one of which would have limited the "violent felony" definition to convictions satisfying the elements test. *See Taylor*, 495 U.S. at 582-83. The narrower bill was criticized for "excluding property crimes" that might "present a serious risk of harm to persons." *Id.* at 584-87.

The compromise bill therefore included property crimes that posed an inherent serious risk of physical injury, even though they did not (unlike the crimes covered by the elements clause) require as an element "violence against persons." *Id.* at 587-88. Four specific such crimes were enumerated: burglary, arson, extortion, and use of explosives. Others were covered by the "residual clause," capturing crimes that "otherwise involve[d] conduct that presented a serious

potential risk of physical injury to another." 18 U.S.C. § 924(e)(2)(B)(ii). The residual clause thus required courts to speculate about conduct and risk, asking them to "picture the kind of conduct that the crime involves in 'the ordinary case,' and to judge whether that abstraction presents a serious potential risk of physical injury." *Samuel Johnson*, 135 S. Ct. at 2557. The elements clause, in contrast, looks only to the minimum legal requirements for the crime within its elements. *See id.*

The residual clause is no more, but Congress's intent in crafting the elements clause remains. That intent—reflected in the ordinary meaning of the text—is to capture only those crimes that legally require the perpetrator to use strong, substantial force capable of causing injury, *see Curtis Johnson*, 559 U.S. at 140—not those crimes that might only sometimes (or even typically), by their conduct, involve such force. And Florida robbery does not expressly require such force. The test is "any degree of force" capable of overcoming any "resistance," Pet'r Br. 28-31 (examining cases); the capacity to cause injury is not a required factor. Nor can the "overcoming resistance" element be satisfied *only* by injury-capable force—as the conviction based on pulling bills from a closed fist (among others, *see* Pet'r Br. 33-35) demonstrates.

Rather than focus on the least culpable conduct criminalized by state law, *see Moncrieffe v. Holder*, 569 U.S. 184, 190-91 (2013), the government would have the Court hypothesize the maximal amount of risk of injury that could be produced by some hypothetical chain of events arising out of the facts of a particular case—for example, a push could maybe cause a fall

which could maybe cause an injury (even if it did not, BIO 12-13)—and assume that state law must require the creation of such risk as an element of the crime. But this is inconsistent with the elements clause's focus on the least-culpable state-law floor and strikingly reminiscent of the analysis used by courts under the residual clause to capture robberies that did not satisfy the elements clause. *See, e.g.*, *United States v. Welch*, 683 F.3d 1304, 1313 (11th Cir. 2012) (holding that although robbery by snatching might not involve the use of force as an element, it involved a serious risk of physical injury because the victim could fall from trying to hold on to her property, thereby suffering injury).

Such conjectural analysis has no place in the elements clause, which focuses not on what risk of injury might arise from some combination of the victim's characteristics, the perpetrator's conduct, and the circumstances of the crime in a hypothetical case, but on what degree of force the perpetrator is required to use, in every manifestation of the offense, to satisfy the elements of the state crime.

Where Congress has been clear—as it has in the elements clause, *Curtis Johnson*, 559 U.S. at 140—the Court should not allow modes of analysis from the now-invalidated residual clause to expand upon the elements-clause definition. Ultimately, if Congress is concerned that ACCA sweeps too narrowly with respect to robbery, it has a host of choices. It could, for example, enumerate robbery (thereby including all "generic" robberies), define a robbery crime that would qualify (as it did in 1984), or (following the model of 8 U.S.C. § 1101(a)(43) for aggravated felonies), provide

a list of federal statutes that would qualify as violent felonies and include state analogues.

But, for now, the statute in its present form is clear and must be applied according to its plain terms: only a robbery that requires, as an element, the use of substantial, purposeful, violent force qualifies to make someone an "armed career criminal." Florida law, which deems any theft a robbery if the perpetrator so much as nudges a bystander in their haste to flee, does not require such force. It is therefore not a violent felony under ACCA.

CONCLUSION

For the foregoing reasons, the judgment of the Eleventh Circuit should be reversed.

Respectfully submitted.

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